Current tax issues

Tom Maguire
This morning…
Section 76A

1. For the purposes of Case I or II of Schedule D, the profit or gain of a trade or profession carried on by a company shall be computed in accordance with Generally Accepted Accounting Practice subject to any adjustment required by law in computing such profits or gains for these purposes.

2. Gives power and effect to Schedule 17A.
Revenue guidance on FA2005:

“Law” for these purposes is not defined but it would constitute statute law, statutory instruments and any directly applicable EU law. It would effectively include case law because case law involves a decision by the courts as to what statute law means. Revenue practice notes would not constitute law but they do outline how Revenue interprets the law.”
Schedule 17A

- Brings in transitional arrangements from current GAAP to RAS

- More definitions – Relevant Accounting Standards (RAS)
  - IFRS
  - or
  - Irish GAAP which is based on published standards which
    • are stated to embody in whole or in part IFRS
    • and, the application of which would produce results
      which are substantially the same as those produced by
      IFRS
  - After 1 January 2015 Irish GAAP based on standards
    which embody IFRS
    [FRS101 and 102]
    Revenue guidance say early adopters covered
Section 76B – Financial instruments

• More definitions!
  ➢ Fair Value
  ➢ Financial Asset
  ➢ Financial Liability

• A profit or gain from financial asset or financial liability
  ➢ In accordance with RAS
  ➢ Included in P&L account of the company for accounting period shall be taken into account in computing case I or II profits.

• No distinction between realised or unrealised gains/losses
Financial instruments
Schedule 17A – Transitional Arrangements

- Basic idea – to ensure no drop out of revenue or expenditure from the tax net

- Deals with
  - Changeover of non specific items of Irish GAAP to RAS
  - Specific rules for financial instruments
Schedule 17A – Non Specific Items

- Excess – spread over 5 accounting periods

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable amount</td>
<td>X</td>
</tr>
<tr>
<td>Deductible amount</td>
<td>(X)</td>
</tr>
<tr>
<td>Excess</td>
<td>X/&lt;X&gt;</td>
</tr>
</tbody>
</table>

- Where the company’s last accounting period in which it carried on a trade or profession occurs within the 5 accounting period spread, then the last accounting period will act as the “catch-up” period, i.e. no income/deduction falls out.
• A financial instrument cost 100 in 2014.
• It had a fair value of 130 at December 2014.
• It was sold for 150 in 2015.

• Before RAS the company was taxed on a realised basis.
• After RAS the company is taxed on movements in the fair value.
• Fair value has increased in 2015 so that the company becomes taxable on 20. This means that, overall, the company is taxed only on 20 even though it made a gain of 50

• The 30 that would otherwise not have been counted is identified as a “taxable amount”.
Follow the accounts in computing trading profits

Amounts “falling out” on transition spread over 5 years
This morning...
CFC legislation

**Definition of CFC**
- companies, trusts, non-transparent partnerships and PEs where the PE’s income is exempt in its head office.

**CFC rules**
- a legal and economic control test

**CFC income**
– passive income of excess profits
Action 13
TP Documentation and CbC reporting

Master File
Key information about the group’s global operations including an overview of the company’s structure from a transfer pricing perspective

Local file
Detailed transfer pricing analysis of the transactions undertaken by the local taxpayer

Country-by-Country (‘CbC’) Template
Key financial information on all group members on an aggregate country basis with an activity code for each member
<table>
<thead>
<tr>
<th>Master File</th>
<th>Local File</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Organisational Structure</strong></td>
<td><strong>1. Local Entity</strong></td>
</tr>
<tr>
<td>• Chart with Group legal &amp; ownership structure and geographical location of operating entities</td>
<td>• Local organisation chart and management structure</td>
</tr>
<tr>
<td><strong>2. Description of the Group’s Business(es)</strong></td>
<td></td>
</tr>
<tr>
<td>• Important drivers of business profits</td>
<td>• List of key competitors</td>
</tr>
<tr>
<td>• Description of important business restructuring transactions</td>
<td>Detailed description of the business and business strategy pursued (including business restructurings or intangible transfers)</td>
</tr>
<tr>
<td>• Description of supply chain for 5 largest products / services</td>
<td></td>
</tr>
<tr>
<td>• List and brief description of important group service arrangements</td>
<td><strong>2. Controlled Transactions</strong> (not exhaustive)</td>
</tr>
<tr>
<td>• Brief functional analysis describing the principal contributions to value creation by individual group entities</td>
<td>• Amount of intra-group payments and receipts involving the local entities broken down by jurisdiction of the foreign payor / recipient</td>
</tr>
<tr>
<td><strong>3. Group’s Intangibles</strong></td>
<td>• List of associated enterprises involved in controlled transactions and relationships</td>
</tr>
<tr>
<td>• Description of the overall strategy for development and exploitation of intangibles including Group TP policies re R&amp;D and intangibles</td>
<td>• Detailed comparability &amp; functional analysis with copies of all material intercompany agreements</td>
</tr>
<tr>
<td>• List of important Group intangibles with the list of (a) entities legally owning them and (b) important intragroup agreements</td>
<td>• Indication of the most appropriate TP method selected</td>
</tr>
<tr>
<td>• Important transfers of interests in intangibles within the Group</td>
<td>• List and description of selected comparable uncontrolled transactions relied on in the TP analysis and possible adjustments performed</td>
</tr>
<tr>
<td><strong>4. Group Intercompany Financial Activities</strong></td>
<td>• Copy of APAs or tax rulings to which local tax jurisdiction is not a party but impacting relevant controlled transactions</td>
</tr>
<tr>
<td>• Group’s financing arrangements and related TP policies</td>
<td></td>
</tr>
<tr>
<td>• Identification of central financing entities</td>
<td><strong>3. Financial Information</strong></td>
</tr>
<tr>
<td><strong>5. Group’s Financial &amp; Tax Positions</strong></td>
<td>• Annual local entity financial accounts</td>
</tr>
<tr>
<td>• List of relevant APAs and tax rulings relating to the allocation of income among countries</td>
<td>• Information and allocation schedules showing link between financial data used in TP method and annual financial statements</td>
</tr>
<tr>
<td>• Annual consolidated financial statement</td>
<td>• Summary schedules and sources of relevant financial data for comparables used</td>
</tr>
</tbody>
</table>
Action 13
CbC Reporting Guidance on Implementation

Timing – when should CbC start?
- Fiscal years beginning on or after 1 January 2016
- Acknowledges that some jurisdictions may need time to legislate domestic law
- Recommended first filing date: 31 December 2017
- Flexibility in reporting per MNE fiscal year end for consolidated reporting

Conditions for obtaining the CbC report
- Confidentiality: jurisdictions have onus of enforcing legal protection of information
- Consistency: information required to be contained in the CbC Report will contain nothing more and nothing less than what is in the template
- Appropriate use: jurisdictions will commit to use CbC for assessing transfer pricing and other BEPS-related risks

Which MNEs are required to file
- Exemption for MNEs with consolidated group revenue of less than EUR750 million
- 90:10 approach in capturing corporate revenues
- 2020 review of the implementation standard
- Allows for no specific exemption to filing

Exchange mechanism
- Primary rule: parent company’s home tax authority will distribute the CbC Report to the tax authorities of all relevant countries, under “exchange of information” treaty provisions
- Secondary rule
  - Tax authority of second-tier holding company will distribute CbC Reports
  - Local country tax authorities obtain CbC Reports from local country subsidiaries
- Implementing arrangements for the automatic exchange of the CbC Reports under international agreements will be developed
This morning...
CCCTB
The Theory ...
The Likely Reality

Assets → Sales
Assets → Employees
Sales → Employees
This morning…
Knowledge Development Box

Entrepreneurs

Travel and subsistence expenses
‘intellectual property, other than for the purposes of the definition of acquisition costs,’

means:

(a) a 

   patent granted under the laws of the State or under any corresponding provisions of any territory outside the State,

(b) any 

   copyright or related right within the meaning of the Copyright and Related Rights Act 2000…in relation to computer software,

(c) any supplementary protection …concerning the supplementary protection certificate for medicinal products,

(d) any supplementary protection certificate …concerning the creation of a supplementary protection certificate for plant protection products, or

(e) any 

   plant breeders’ rights within the meaning of section 4 of the Plant Varieties(Proprietary Rights) Act 1980, as amended by the Plant Varieties (Proprietary Rights) Amendment Act 1998;
Qualifying expenditures incurred to develop IP asset

30% Uplift

Overall expenditure incurred to develop IP asset

Overall income from IP asset

Income receiving tax benefits
1m + 100m × 100m = 1.28m
Knowledge Development Box

Entrepreneurs

Travel and subsistence expenses
UK EIS

Lower income tax rate for lending to company

Lower income tax rate on dividends
…..expenses of travelling from home to work and work to home are expenses of travelling which are NOT necessarily incurred by the office holder or employee in the performance of the duties of his/her office or employment.

If an office holder or employee receives expense payments in respect of travelling to and from work, such expense payments are taxable and subject to PAYE deductions.
Two aspects in one concept

CONCEPT

Normal place of work – fact based

Non Executive directors
Conclusion

New Irish GAAP – follow the financial statements but 5 year spread

BEPS - significant change is coming

Finance Bill results of consultations
Just one more thing...
The tax@hand app

About Deloitte tax@hand

Last revised on: 30 Sep 2014

What is tax@hand?

Deloitte tax@hand is one app accessible on multiple devices. It is designed to be:

Highly interactive — Access tax news and information and perspective articles, as well as links to the Deloitte International Tax Source